

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

76-7407

United States Court of Appeals
FOR THE SECOND CIRCUIT

GREEFF FABRICS, INC.,

Plaintiff-Appellant,

—v.—

MALDEN MILLS INDUSTRIES, INC.,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF OF PLAINTIFF-APPELLANT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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GREEFF FABRICS, INC., :
Plaintiff-Appellant, :
-against- : Docket No. 76-7407
MALDEN MILLS INDUSTRIES, INC., :
Defendant-Appellee. :
-----x

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FACTS

The statement of facts in Defendant's Brief, pages 2-10 is calculated to mislead the Court.

1. It is stated on page 2 of Defendant's Brief that

"Greeff had given Belle a rubber stamp with which to apply a copyright notice to the hangtags which Belle attached to its fabric, one to each bolt containing 50 yards of fabric and 70 repeats of the design." (Our emphasis)

Plaintiff did indeed give Belle a rubber stamp with which to apply the copyright notice, but it was to be applied to the fabric. This appears from the following testimony quoted on page 9 of Defendant's Brief:

Q [MR. GOLDBERG] Were you told that this was the rubber stamp that you were to use to apply the copyright notice to your fabric?

A [MR. LEWKOWICZ] Yes. (Our emphasis)

It is true that the rubber stamp could not be applied to the fabric (Defendant's Brief, page 9) but this was not known to Belle at the time it received the stamp. It was only after unsuccessfully trying to apply the stamp to the fabric with various inks (which Belle never reported to plaintiff, App. 199a) that Belle decided to apply it to the "hangtags" (properly called "piece tickets"). Belle does not recall bringing this to the attention of plaintiff or plaintiff's attorneys. (App. 199a-200a) Defendant's Brief also omits the following testimony of Mr. Lewkowicz's attorney (App. 242a-243a):

THE WITNESS: [MR. POPPER] Your Honor, it was my understanding that a rubber stamp would be supplied to my client and he would use that rubber stamp to imprint the copyright notice on the fabric, and that is the --

* * *

THE COURT: You thought it could be done right on the fabric, whereas, as he explained it, ink wouldn't come off or something, and that he had trouble finding out what to do?

THE WITNESS: I didn't know the back of the fabric would be coal black and that the rubber stamping wouldn't be visible.

2. The following captions (and discussions thereunder) appear on page 3 and 4 of Defendant's Brief:

"First Piece of Fabric - No Copyright Notice.

* * *

"Second Piece of Fabric - No Copyright Notice."

These are references to the first two specimens of Belle fabric which defendant obtained from undisclosed sources. The first specimen is the one which defendant actually copied (Plaintiff's Brief, page 9, App. 257a). Neither specimen bore a copyright notice.

What defendant neglects to say is that there is nothing in the record to show that these two specimens were authorized by plaintiff, that is, that they were made or sold or shipped by Belle after Belle became plaintiff's licensee on October 20, 1975. See Plaintiff's Brief, pages 7-8, App. 267a:

MR. ROBERT STOLL: I take it, then, that counsel has no evidence which would establish whether they were shipped by Belle before or after the October 20th date.

MR. GOLDBERG: I think it has been made clear that there is nobody in the world who could have such evidence. It is a physical impossibility.

THE COURT: I gather the answer is yes.

MR. GOLDBERG: Yes, your Honor.

But even this statement by Mr. Goldberg is misleading because the first Belle specimen, the one which defendant actually copied (App.257a), was obtained by defendant either before July, 1975 (as plaintiff's witness Fogel testified, (App. 321a-322a) or on or about October 20, 1975 (according to defendant's answers to plaintiff's interrogatories, App. 19a). In either case, the first specimen was an infringement because it had to be made, sold and shipped to a Belle customer prior to October 20, 1975.

The second Belle specimen was also an infringement. Defendant's general manager Glasser testified, at the preliminary injunction hearing that:

"Well, before sending it [the first specimen] to the screenmaker, we wanted to make sure about the repeat, that there wasn't by some freak, a copyright of this sample. We asked our sales people to get a larger end and they sent us ten yards of goods [the second specimen]." (App. 32a; our emphasis.)

When was the first specimen sent to the screenmaker?

Mr. Glasser testified very positively at the trial that this was done on October 21, 1975 (App. 256a,257a). Thus Belle could not possibly have made, sold and shipped the second specimen to its customer subsequent to becoming plaintiff's

licensee (on October 20, 1975) with enough time left over before October 21, 1975, for defendant to have requested its sales people to obtain that specimen and for those sales people to have complied with that request. The first two specimens bore no copyright notice because they were infringements.

3. Defendant's Brief, pages 5-6, makes a big point about the position of the so-called "hangtag" on the third Belle specimen which was a 5-yard cut severed from a 50-yard bolt. It was stapled to the specimen with the copyright notice on the reverse side. But defendant's attorney's admitted that defendant "doesn't know who put it [the "hangtag"] on or who [how] it got there." (App.301a-302a)

4. To show that plaintiff's attorneys approved Belle's use of the allegedly insufficient copyright notice, Defendant's Brief (page 6) quotes the following caption from plaintiff's Memorandum of Law on Adequacy of Copyright Notice:

"Belle's use of the copyright notice is rigorous and in accordance with the requirements of the limited license."

But this caption is quoted out of context. The entire section which follows the caption is set forth as follows (App. 431a):

"The affidavit of J. Lewkowicz is clear: plaintiff's copyright notice is at all times scrupulously applied to all of the fabric in question sold or displayed in any form, see paragraphs 3 and 4 of the affidavit. This is uncontroverted and, since the burden is defendant's to show non-affixation of the copyright notice, Modern Aids, Inc. v. R.H. Macy & Co. Inc., 264 F. 2d 93 (CA 2 1959), it must be taken as fact that Belle's fabric in question entered commerce with a proper copyright notice."

This section had nothing to do with Belle's method of affixation of the copyright notice. Its sole purpose, in the context of defendant's showing of two specimens of infringing Belle fabric without a copyright notice, was to assure the Court that the copyright notice was scrupulously attached to all of Belle's licensed fabric.

5. It is stated in Defendant's Brief (page 3) that:

"The legend [on the strike-off samples of defendant's infringing fabric] inadvertently contained a copyright symbol." (Our emphasis)

There is nothing in the record to show that defendant's use of a false copyright notice was inadvertent. On the contrary, defendant used the false copyright notice on all 175 designs in its upholstery fabric line (Plaintiff's Brief, page 5) and defendant did so "for years" (App. 46a). This is the same defendant whose general manager Glasser first testified that he did not know what the "©" on defendant's samples was (App.45a-46a); who also testified (as stated in Defendant's Brief, page 3) that he examined the first Belle specimen "from selvege to selvege, face and reverse sides, found no copyright notice or other notation"; and who then double-checked by obtaining the second Belle specimen and "looked at the back and the front, and all the selvages, of course, to see if there was any copyright notation on this fabric" (App. 33a). Defendant should not be heard to say that its use of a false copyright notice on its infringing copy of plaintiff's copyrighted design was inadvertent.

**POINT I. THE TRIAL COURT FAILED TO DECIDE THE
QUESTION OF VALIDITY OF THE PRACTICE OF
USING A PIECE TICKET TO AFFIX A COPY-
RIGHT NOTICE TO FABRIC SOLD ONLY TO
THE ULTIMATE USER THEREOF.**

There is nothing in the decision on appeal that in any way deals with this question. When the trial Court decided plaintiff's motion for a preliminary injunction, it held that "the single copyright notice affixed by Belle to the fifty-yard rolls it produced is insufficient to protect Greeff's copyright" (App.60a). But this determination was made without the benefit of the trial testimony, and no determination of the question was made after the trial testimony was heard. In short, this Court of Appeals will look in vain for any finding or determination by the trial Court that a piece ticket bearing a copyright notice and attached to a multi-repeat bolt of fabric sold only to the ultimate user, is insufficient, whether because it fails to give adequate notice or because it fails to comply with the statutory requirements, or for whatever reason.

**POINT II. A COPYRIGHT NOTICE ON A PIECE TICKET ATTACHED
TO MULTI-REPEAT FABRIC SOLD ONLY BY THE ROLL
AND ONLY TO ULTIMATE USERS OF THE FABRIC IS
SUFFICIENT UNDER SECTION 10 OF THE COPYRIGHT LAW**

Plaintiff's Brief, pages 25-29 shows that piece tickets are identified with the particular rolls of fabric to which they are attached and that they remain with their respective rolls until the fabric is entirely consumed. To refute this showing, Defendant's Brief, page 14-17 challenges the competence of

plaintiff's witnesses. The strongest testimony came from plaintiff's witness Myron Fogel, a former employee of defendant's sales representatives. However, the bulk of his testimony on this subject (Plaintiff's Brief, pages 28-29) was elicited by defendant's own attorney Kinzler.

The statement in Defendant's Brief, page 16, that Mr. Fogel was "fired for incompetence" is false (Fogel Deposition, page 74); the statement that he "attempted without success to get a job from Belle" is grossly exaggerated (App. 358a); and the statement that he "had never worked for any furniture manufacturer or any user of the kind of fabric produced by Malden" (Defendant's Brief, page 16, defendant's emphasis) can have no purpose other than to mislead the Court, since there is no showing the defendant's own witness on the same issue, Sanford Levine, had ever worked for a furniture manufacturer or any user of the kind of fabric produced by defendant.

Defendant's Brief, page 15, asserts that plaintiff's witness Daniel M. Drinkard "had been directly involved in the upholstered furniture trade for only two years, before which he was only concerned with financial affairs (132a-137a)." Mr. Drinkard's testimony (App. 132a) was that:

"From 1965 until 1974 I was employed by the Lane Company. During that time I spent four years in the financial part of the business, and then for four and a half years I was president of Clyde-Pearson Company, which was an upholstery division of Lane. In 1974 I resigned and formed my own company, the Stanton-Cooper Company, as I have stated, which is a manufacturer of upholstered furniture."

Defendant's Brief, page 15, asserts that plaintiff's witness Richard Chwatt was without experience in the field of upholstery fabrics. Defendant's objections to Mr. Chwatt's testimony was sustained by the trial Court and his testimony was effectively excluded from the record (App. 217a, 222a-223a, 226a, 227a, 228a).

It is respectfully submitted that the trial Court was misled by defendant's argument that plaintiff was relying on an alleged "custom in the upholstered furniture trade" concerning the use of "hangtags" (Defendant's Brief, page 15) Plaintiff's reliance was on the universal practice in the textile industry of using piece tickets - not hangtags - as permanent attachments to fabrics sold to manufacturers for manufacturing purposes. See the testimony of Messrs. Drinkard and Fogel on pages 27-29 of Plaintiff's Appeal Brief and Mr. Lewkowicz's affidavit (Defendant's Exhibit J, App. 402a):

"These tickets are universally used in the [textile] industry."

After disposing of plaintiff's "inexperienced and/or interested" witnesses, Defendant's Brief, pages 16-17, quotes from defendant's national sales manager (disinterested?) as follows:

Q [MR. GOLDBERG] When you ship a bolt, is there a piece ticket on it?

A [MR. LEVINE] Yes.

Q Can you tell what the customer does with the bolt?

A It is entered by the receiving department. The ticket is almost always taken off of that pice [sic]. The customer's own ticket is affixed to that piece. It is then compared with the receiving record. Both documents go up to the bookkeeping department so it can be compared with an invoice, which of course comes in from Malden, so they can see if they got billed for [what] they received.

Although this testimony is in conflict with the testimony of plaintiff's witnesses Drinkard, Fogel and Lewkowicz, and the excluded testimony of plaintiff's witness Chwatt, defendant's testimony shows that the piece ticket is on the fabric when the fabric reaches the manufacturer, and what the manufacturer does with the piece ticket thereafter is of no significance. See H.M. Kolbe Co. v. Armigus Textile Co., 315 F.2d 70, 74 (2 Cir. 1963).

PIECE TICKETS ARE NOT DETACHABLE, DISCARDABLE, HANGTAGS

Hangtags and tickets are not synonymous, although sometimes, as here, tickets may also be hangtags. The term "ticket" has a legal meaning and is used in statutory law, e.g., the New York Penal Law, Section 155.2(2)(b), the New York Agriculture and Markets Law, Section 197-b, and the New York General Business Law, Section 392-b. Section 392-b provides that:

"A person, who with intent to defraud:

- "1. Puts upon an article of merchandise, or upon a ...ticket...with which such an article is intended to be sold, or is sold, any false description or other indication of or respecting the kind, number, quantity, weight or measure of such article, or any part thereof, or the place or country where it was manufactured or produced or the quality or grade of any such article, if the quality or grade thereof is required by law to be marked, branded or otherwise indicated on or with such article; * * *

is guilty of a misdemeanor."

Defendant's Brief, page 14, states that the Copyright Office will not accept an application for copyright where the only copyright notice is on a detachable hangtag. 37 C.F. R. §202.2(b)(9). However, the detachable tag must be one which "will eventually be detached and discarded when the work is put in use" (Our emphasis). Even defendant's national sales manager admits (page 17 of Defendant's Brief) that the piece tickets are not discarded; on the contrary, they "go up to the bookkeeping department".

There is also an inconsistency between §202.2(b)(9) and various decisions of this Court, e.g., Peter Pan Fabrics v. Martin Weiner Corp., 274 F.2d 487,489 (2 Cir. 1960), and Peter Pan Fabrics v. Dixon Textile Corp., 280 F. 2d 800, 802 (2 Cir. 1960). In the Weiner case, 274 F 2d at page 489, copyright notices on the selvedge of a bolt of fabric were approved

"although the notices served the purpose of advising those who bought, or dealt with, the bolts, [and] they did not give adequate notice to those who bought, or wore, dresses made of the cloth, for, when not altogether cut off, they were so placed as to be most unlikely to be detected."

The important distinction to be made with respect to the cases cited on page 14 of Defendant's Brief (the Trifari, Scarves By Vera, and Gardenia cases) is that they deal with hangtags which are likely to be detached and discarded, and cannot, therefore, be relied upon to give notice of copyright to all customers.

What is significant in the present case is that the piece tickets to which Belle applied its copyright notice were not likely to become accidentally detached from the goods. As stated by Mr. Lewkowicz (Defendant's Exhibit J, App. 402a):

"They [the piece tickets] are securely attached to the bolts either by metal staples or by a strong string and a metal barb-type fastener (which is readily inserted into the fabric or through a punched hole in the tubular core)."

As testified by Mr. Fogel on questioning by defendant's attorney Kinzler (App. 351a):

"It locks onto the piece of goods until it is torn off, unless it is not put on properly."

In no sense should these piece tickets be likened unto the hangtags in Gardenia Flowers v. Joseph Markovits, 280 F.S. 776, 783 (D.C.S.D. N.Y. 1968) quoted on page 14 of Defendant's Brief. In Gardenia the "Purported copyright notices were on removeable paper tags which were slipped onto the stems of the samples..."

The hangtags in the other two cases cited by defendant were no more securely attached to the goods than were the hangtags in Gardenia. Indeed, in Scarves By Vera v. United Merchants and Manufacturers, 173 F.S. 625, 628 (D.C.S.D. N.Y. 1959) the hangtags were not even attached to the copyrighted goods (blouses); instead they were tied to labels which were attached to the goods. In Trifari, Krussman & Fishel v. B. Steinberg-Kaslo Co., 144 F.S. 577, 582 (D.C.S.D. N.Y. 1956) the copyrighted goods (earrings) had small tags attached to them, and the court found that "...it is not unlikely that during handling in a retail store, before

the sale, these small tags might have been removed."

That is not the case here. There is no showing that defendant copied any of Belle's licensed goods from which the piece ticket-with its copyright notice-had been removed or had become detached. What defendant copied was Belle's infringing goods which never had a piece ticket bearing a copyright notice.

There is nothing in Section 10, or anywhere else in the present Copyright Law, that defines the word "affixed" or excludes affixation by the "strong string and metal barb-type fastener" which secures Belle's piece ticket to the licensed fabric. There is no reason, therefore, to engraft a limitation or restriction on the requirement for affixation, which Congress has not seen fit to provide. In analogous statutes and rules and regulations, set forth in the annexed addendum, no such limitation or restriction has been imposed. See, for example, Krieger v. Colby, 106 F.S. 124,131, (D.C. Cal. 1952) construing the false patent marking statute, and holding that a false marking on a hangtag is affixed to the goods.

Belle's Copyright Notice is Affixed
to Each Copy of the Licensed Goods.

Plaintiff's Appeal Brief, page 25 asserts that Section 10 does not require a separate copyright notice for each copy or repeat of the copyrighted work; a single copyright notice will satisfy Section 10 if it, in fact, is affixed to each and every copy or repeat: "It is enough, as here,....that a copyright notice

is attached to the smallest commercial unit sold, and it is thereby attached to each and every part and repeat thereof."

Defendant completely ignores this contention and reiterates "the requirement of 17 U.S.C. §10 that a copyright notice shall be affixed to 'each copy' of the work" (Defendant's Brief, page 11).

But ignoring the contention doesn't change the fact that a copyright notice which is affixed to one end of a bolt of fabric, sold only as a bolt is affixed to the entire bolt and to each and every part and repeat thereof. This principle applies in other branches of the law and there is no reason to exclude it from the law of copyrights.

In the field of patent law, in Royal Typewriter Co. v. Remington Rand, 168 F. 2d 691, 693 (2 Cir. 1948), Judge Learned Hand wrote that:

"...we speak of two objects as 'attached' to each other, though they are connected by a train of links or even by a chain."

If one object is attached to another though they are connected by a train of links or a chain, by what rule of reason is a copyright notice, which is affixed to one end of a bolt of fabric, and which is connected to the opposite end of the bolt by the fabric itself, deemed not to be attached to each and every part and repeat of the fabric?

The fact is that in Scarves By Vera v. United Merchants and Manufacturers, 173 F.S. 625, 628 (D.C. N.Y. 1959), Judge Edelstein held that a single copyright notice which is affixed

to one side of a blouse is deemed affixed to the opposite side of the blouse, so that a single copyright notice suffices for two separate repeats of the copyrighted design, one imprinted on the one side and the other on the opposite side:

"Defendants further urge defective notice in that the notice has not been affixed to each copy of the copyrighted work, in accordance with section 10 of Title 17. The plaintiff's blouses *** bear two separate imprints of the same design, one on the ^{front} ~~wrong~~ side and one on the back. But if the notice was sufficient in *Boucher v. Du Boyes, Inc.*, 2 Cir., 235 F 2d 948, certiorari denied 357 U.S. 936, 78 S. Ct. 1384, 2 L. Ed.2d 1550, wherein it was stamped only upon one earring of a pair, then the notice is certainly sufficient here. If each pair of earrings is to be considered a unit, then certainly a single blouse with two designs must be similarly considered."

Defendant's reliance on Dejonge & Co. v. Brueker & Kessler Co., 235 U.S. 33 (1914) is misplaced. Dejonge construes the Copyright Act of 1874 which contains no provision corresponding to Section 10 of the present Copyright Law. Dejonge's rule of one repeat, one copyright notice, is not followed by Kolbe (or the other cases cited on pages 11 and 12 of Defendant's Brief) which approves one notice per revolution of the printing roller although this may produce multiple repeats.*

* Plaintiff's own copyrighted fabric (as distinguished from Belle's licensed fabric) does indeed have a copyright notice affixed to each repeat. This is done by printing the copyright notice on both selvages of the fabric (there are two side-by-side repeats in the copyrighted design).

POINT III. A PRIME QUESTION IN THIS CASE IS THE EFFECT OF THE NEW COPYRIGHT LAW UPON THE BASIC ISSUE OF VALIDITY OF THE COPYRIGHT NOTICE OF PLAINTIFF'S LICENSEE BELLE.

Plaintiff's Brief devoted 16 pages (pages 45-60) to this question; Defendant's Brief allocates it 20 lines (pages 21-22). Defendant would put the first General Revision of the Copyright Law since 1909 into mothballs or a deep freeze until its effective date (January 1, 1978), but this can no more be done than to mothball or deep freeze the President-Elect until the effective date of his Presidency, January 20, 1977.

Defendant's argument (page 21 of its Brief) is that:

"This statute [the new Copyright Law], which became law three months after the decision appealed from was rendered, is clearly inapplicable here since, as Greeff admits (p. 46 of its Brief), it provides that 'All causes of action that arose under title 17 before January 1, 1978, shall be governed by title 17 as it existed when the cause of action arose.' "

We do not suggest that this action be governed by any law other than the Copyright Law as it presently exists. But the present Copyright Law, in common with all laws passed by the Congress, must be construed "to ascertain the congressional intent and give effect to the legislative will", Philbrook v. Blodgett, —U.S.—, 95 S.Ct. 1893, 1898 (1975). Subsequent legislation relating to the existing legislation may be considered in ascertaining the Congressional intent. Thus, as stated in Plaintiff's Appeal Brief, page 45, this Court has held, in Goodis v. United Artists Television, 425 F.2d 397, 402 (2 Cir. 1970) that even when the new Copy-

right Law was a pending bill it constituted "a valuable reference tool to be used in cases arising under the present Copyright Act." Now that the bill has become law, should it be less than a valuable tool in cases arising under the present Copyright Act?

Goodis was no aberration, as the following cases indicate:

In United States v. Lowen, 308 U.S. 225, 237, 60 S.Ct., 248, (1939), at page 255, the Supreme Court looked to pending legislation for an expression of Congressional intent or policy and then applied such Congressional intent or policy to existing law.

In Great Northern Ry Co. v. United States, 315 U.S. 262, 277, S.Ct. 529 (1942), at page 535, the Supreme Court held that:

"It is settled that 'subsequent legislation may be considered to assist in the interpretation of prior legislation upon the same subject.' "

In National Labor Relation Board v. Alis-Chalmers Manufacturing Co., 388 U.S. 175, 194, 87 S.Ct. 2001 (1967), at page 2014, the Supreme Court held that:

"Courts may properly take into account the later act when asked to extend the reach of the earlier Act's vague language to the limits which, read literally, the words might permit."

a. The Congressional Intent Underlying the Notice Provisions of the New Copyright Law.

Report No. 94-1476 of the House Committee on the Judiciary on the Copyright Law Revision (September 3, 1976) contains an analysis of the notice provisions of the new Copyright Law, and we here quote a pertinent section thereof (page 144):

"By providing simply that the notice 'shall be affixed to the copies in such manner and location as to give reasonable notice of the claim of copyright,' subsection (c) follows the flexible approach of the Universal Copyright Convention. The further provision empowering the Register of Copyrights to set forth in regulations a list of examples of 'specific methods of affixation and positions of the notice on various types of works that will satisfy this requirement' will offer substantial guidance and avoid a good deal of uncertainty. A notice placed or affixed in accordance with the regulations would clearly meet the requirement but, since the Register's specifications are not to 'be considered exhaustive,' a notice placed or affixed in some other way might also comply with the law if it were found to 'give reasonable notice' of the copyright claim."

Defendant agrees that "reasonable notice" is the requirement of the new Copyright Law (Defendant's Brief, page 21):

"But Judge Cannella's decision is just as correct under the new statute as under the one currently in force. Notice of copyright will still be required (§401) and although the Register of Copyright is empowered to promulgate regulations regarding placement, her power is limited by the words 'in such manner and location as to give reasonable notice of the claim of copyright' (§401(c))."

b. The Congressional Intent Underlying the Notice Provisions of the Present Copyright Law.

The present Copyright Law, by amendment dated August 31, 1954, also contains a reference to the Universal Copyright Convention, and it actually incorporates the "reasonable notice" provisions of that Convention for the benefit of foreign nationals. We refer to Section 9(c) which, in a proviso, requires that:

" ***all the copies of the work published with the authority of the author or other copyright proprietor shall bear the symbol © accompanied by the name of the copyright proprietor and the year of first publication placed in such manner and location as to give reasonable notice of claim of copyright."

The same "reasonable notice" requirement was brought into another provision of the present Copyright Law by amendment dated October 15, 1971. We refer to Section 20 of the present Copyright Law which, as amended, reads in part as follows:

"The notice of copyright shall be applied, in the case of *** a sound recording on the surface of reproductions thereof or on the label or container in such manner and location as to give reasonable notice of the claim of copyright."

It is true that Section 10 does not contain the expression "reasonable notice", but Sections 9 and 20 now do. There is nothing in Section 10 which conflicts with the rule of reasonable notice and there is no reason to construe Section 10 differently from Sections 9 and 20. If reasonable notice satisfies Sections 9 and 20, it should also satisfy Section 10.

It is important to note, as above stated, that the expression "reasonable notice" was brought into Sections 9 and 20 by amendments passed, respectively, in 1954 and 1971; Section 10 remains as enacted in 1909. Surely, the amendments of 1954 and 1971 evidence the Congressional intent and this intent should equally be applied to all other notice provisions of the present Copyright Law, including Section 10. It is this Congressional intent which should control, not the Court decisions cited in Defendant's Appeal Brief (pages 10-12) which may be at variance with that intent.

See Denver and Rio Grande Western Railroad Co. v. Brotherhood of Railroad Trainmen, 387 U.S. 556, 561, 87 S.Ct. 1746,

1749 (1967) where the Supreme Court construed the Congressional intent underlying an amendment to one venue statute (relating to corporations) as "correcting an unacceptably narrow definition of corporate residence which had been adopted by the courts", and the Court then applied that intent to another venue statute (relating to unincorporated associations) to correct the same unacceptably narrow definition of residence which the Courts had adopted in relation to unincorporated associations.

See also, In Re Petition of Chin Thloot Har Wong, 224 F.S. 155, 161 (D.C. S.D. N.Y. 1963) where Judge Feinberg held that amendments "may properly be considered in the interpretation of the prior legislation."

c. What is Reasonable Notice?

The Congressional intent concerning this question (as applicable to fabric designs) may be discerned in Title II of the General Revision of the Copyright Law in its pre-enactment form. As stated in House Report No. 94-1476, pages 49-50, Title II was passed by the Senate on five separate occasions beginning in 1962 (the last occasion was in February, 1976, when it was passed by a vote of 97-0). For reasons (House Report No. 94-1476, page 50) which have nothing to do with the reasonable notice provisions under discussion, Title II has not been passed by the House, but, according to

the House Committee, "without the encumbrance of a general copyright revision bill, the issues raised in Title II of S.22 may be resolved "during the 95th Congress.

Title II deals with designs and, as set forth in Plaintiff's Appeal Brief, page 51, Section 206(b) of Title II provides as follows:

"(b) The notice shall be so located and applied as to give reasonable notice of design protection while the useful article embodying the design is passing through its normal channels of commerce. This requirement may be fulfilled, in the case of sheetlike or strip materials bearing repetitive or continuous designs, by application of the notice to each repetition, or to the margin, selvage, or reverse side of the material at reasonably frequent intervals, or to tags or labels affixed to the material at such intervals."
(Emphasis supplied)

"Reasonable notice" is the Congressional intent, and in the case, as here, of fabric designs, the requirement for "reasonable notice" may be fulfilled by applying the notice to the material or to "tags or labels affixed to the material" at "reasonably frequent intervals".

What are "reasonably frequent intervals"? In the case of textiles which "are normally sold by the bolt at wholesale, in units of a yard at retail", the notice should be applied at intervals corresponding to the "smallest commercial unit" by which the textiles are sold. H.M. Kolbe Co. v. Armigus Textile Company, 315 F.2d 70, 73 (2 Cir. 1963). This was the rule enunciated under the present Copyright Law; it should be equally applicable to the new Copyright Law.

But where, as the District Court found in the present case, "Belle apparently sold this fabric in entire rolls and did not cut the material for sale in smaller quantities", and where those rolls of fabric were sold only to furniture manufacturers for use in manufacturing upholstered furniture, and not for resale at retail by the yard, it is clear that the "smallest commercial unit" sold by Belle was a full roll* (Plaintiff's Appeal Brief, pages 51-53). Under the circumstances, was Belle's copyright notice "reasonable notice"?

d. Belle's Copyright Notice Was "Reasonable Notice".

Counsel for defendant has stipulated that Belle's copyright notice would give notice if placed where it would be seen (Plaintiff's Brief, page 21):

MR. STOLL: I am asking for your stipulation.

MR. GOLDBERG: Yes, we are not arguing with the form of it. It would give somebody notice if it was placed anywhere where they could see it, yes.

But Defendant's Brief, at page 22, asserts that:

"As this case shows, notice on a hangtag attached to a 50-yard bolt of fabric containing 70 repeats of a design ^{does} not give reasonable—did not give Malden any—notice of Greeff's claim to copyright." (Defendant's emphasis)

*Totally misleading is the statement in Defendant's Brief, page 13 (and repeated elsewhere) that "The Court may also have been impressed by the fact that Malden had had no difficulty on three different occasions in obtaining Belle's fabric in far less than full pieces." These three pieces of fabric were obtained from furniture manufacturers, not as goods purchased in the normal course of business, but as cuts intended for copying or for use as evidence in the case (App. 257a, 261a, 272a). Defendant did not obtain these cuts from the only legitimate source of the goods, Belle (App. 29a).

This is a totally unfounded statement,* supported by nothing in the record. There is no showing that defendant ever saw a 50-yard bolt of Belle's licensed fabric, whether with or without a "hangtag" attached thereto bearing a copyright notice. To the extent shown by the record, the only piece of Belle's licensed fabric that defendant ever saw prior to trial was a 5-yard cut that one of its salesmen obtained from a furniture manufacturer after the suit was instituted (App. 39a-42a). Defendant's general manager had no trouble noticing the copyright notice which was affixed to this Cut (Plaintiff's Brief, pages 21-22):

Q [MR. GOLDBERG] Mr. Glasser, did you examine this five yard piece marked Defendant's Exhibit B?

A [MR. GLASSER] The minute that it was received, since time was so short, it was run right out on our tables and we looked under very strong light both back and front and selvages to see if there was any marking of any copyright whatsoever. The only thing we did see was, there was the tag stapled to the edge of the piece, which we turned over, and there was a rubber stamp on the back which states, "Fabric design copyright by Greeff Fabrics Company, not a Greeff product."

* Similar statements are made elsewhere in Defendant's Brief, e.g., on page 10:

"The record is clear that the insufficient notice used by Greeff's licensee failed to give Malden notice that anyone claimed copyright in the subject design."

There is no showing or finding anywhere in the record that anyone, whether defendant, or a Belle customer, or anyone else, ever failed to see Belle's copyright notice on Belle's licensed goods. There is no showing or finding anywhere in the record that Belle's copyright notice was so located or so attached as to be likely to go unnoticed. There is no showing or finding anywhere in the record that Belle's copyright notice is not "reasonable notice", or that, in any respect, it fails to comply with the precise provisions of Section 10 of the present Copyright Law. Indeed, the above-quoted stipulation of defendant's attorney Goldberg, and the above-quoted testimony of defendant's general manager Glasser, bring the case precisely within the rule which this Court adopted in Coventry Ware v. Reliance Picture Frame Co., 288 F. 2d 193, 195 (2 Cir. 1961):

"Perhaps the best summary of the applicable principle may be found in the decision of Judge Bicks in Trifari, Krussman & Fishel, Inc. v. Charel Co., D.C. S.D. N.Y., 134 F. Supp. 551, 554, enjoining the copying of costume jewelry, copyrighted as a work of art, where the notice appeared on the clasp. He stated: 'It is so located, however, as to apprise anyone seeking to copy the article, of the existence of the copyright and is, therefore, sufficient to satisfy the statutory requirements.' "

It is clear that Belle's copyright notice was good notice under the present Copyright Law, especially as amended in 1954 and 1971, and in the light of the new Copyright Law and Title II of the pending design legislation.

POINT IV. SECTION 43(a) OF THE LANHAM ACT AUTHORIZES THE OWNER OF A COPYRIGHT ON A FABRIC DESIGN TO SUE A COMPETITOR WHO PUTS ON THE MARKET AN INFRINGING COPY OF THE COPYRIGHTED DESIGN AND AFFIXES A FALSE COPYRIGHT NOTICE TO SAID INFRINGING COPY, CLAIMING THE COPYRIGHT IN THE INFRINGING DESIGN AS HIS OWN.

a. Suit Under Section 105 of the Copyright Act

Defendant's Brief, page 23, quotes from Section 105 of the Copyright Act and asserts that:

"Since the copyright statute does not also authorize a civil cause of action for misuse of a copyright symbol, it is clear that only a criminal action, provided "fraudulent intent" can be shown, will lie therefor."

Defendant's quote from Section 105 is incomplete. What was quoted requires a showing of "fraudulent intent"; what was omitted does not:

"Any person who shall knowingly issue or sell any article bearing a notice of United States copyright which has not been copyrighted in this country, * * * shall be liable to a fine of \$100."

Defendant's contention that "only a criminal action . . . will lie" is supported by two District Court cases (not cited by defendant), namely, Penn Sportservice v. Goldstein, 35 F.S. 706, 707 (D.C. Pa. 1940) and Scarves by Vera v. American Handbags, 188 F.S. 255,257 (S.D. N.Y. 1960).

We respectfully submit, however, that these decisions are not in accord with higher authority as exemplified by Cort v. Ash, --U.S.--, 95 S. Ct. 2080,2087,2088 (1975) and Reitmeister, v. Reitmeister, 162 F. 2d 691,694 (2 Cir. 1947). In Reitmeister, at page 694, Judge Learned Hand wrote for this Court as follows:

"Although [the Communications] Act does not expressly create any civil liability, we can see no reason why the situation is not within the doctrine which, in the absence of contrary implications, construes a criminal statute, enacted for the protection of a specified class, as creating a civil right in members of the class, although the only express sanctions are criminal."

Surely, Section 105 was enacted for the protection of a class (Authors-Constitution of the United States, Art.1, Sec.8, Cl.8) of which plaintiff is a member, creating a civil right in plaintiff, enabling plaintiff to correct a wrong which would otherwise be perpetrated with impunity. It is not infrequently the case, as here, that a private claimant acts not only in his own interest, but for the benefit of all others who may be aggrieved. Thus, in the present case defendant has applied a fraudulent copyright notice to its entire line of upholstery fabrics consisting of 175 patterns, including copies of plaintiff's copyrighted design in suit and two of Belle's uncopyrighted designs (Plaintiff's Appeal Brief, page 5).

This is wholesale fraud affecting the fabrics industry, those who buy from the fabrics industry, and all who use or rely on the protection of a copyright notice. We are here engaged in a private suit, but if it is sustained, it will benefit the Constitutional class of Authors and those who deal with them and their copyrighted works.

b. Suit Under Section 43(a) of the Lanham Act.

Actually, this cause of action was brought under Section 43(a) of the Lanham Act, 15 U.S.C. 1125 (a), and defendant

views this (Defendant's Brief, page 23) as an attempt "through the Lanham Act to circumvent the clear congressional intent evinced by 17 U.S.C. §105. This is improper." Defendant follows this up with its contention (page 25 of its Brief) that "Since Greeff failed to show that it was or was likely to be damaged by Malden's use of a copyright symbol on the reverse side of test samples containing the subject design, District Court correctly dismissed Greeff's claim under Section 43(a) of the Lanham Act." (Our emphasis)

This is a misleading statement in at least two respects:

1. The entire basis of defendant's opposition to the Section 43(a) cause of action and the trial Court's dismissal thereof was plaintiff's inability to prove actual damage or injury, not likelihood of damage or injury. (Plaintiff's Appeal Brief, pages 64-65, App. 82a).

2. The so-called "test samples" are samples which, as the answer to the complaint admits (App. 13a), "are never sold or used in any manner except as samples for solicitation of orders." (Our emphasis)

Aside from the fact that defendant's above-quoted statement from its Brief is misleading, it is also wrong. A false copyright (or patent) notice is a violation of Section 43(a) of the Lanham Act since, by definition, it is a "false designation of origin" of the design, a "false description" of the goods, and a "false ... representation" concerning copyright ownership,

originality and exclusivity. By definition, a false copyright notice is a false representation of everything a valid copyright notice stands for.

Should a copyright (or patent) owner be required to prove to the Court that he is injured or damaged by a false copyright (or patent) notice applied by an infringer, in the infringer's own name, to his infringing goods? We think not, since this requirement would in most instances, as here, be impossible to satisfy.

A false copyright (or patent) notice should be viewed as a per se violation of Section 43(a), a case analogous to res ipsa loquitur, expecially where, as here, the false notice was applied to all 175 designs in defendant's upholstery fabric line and cannot be deemed an isolated, inadvertent, innocent misuse of a copyright notice.

In support of plaintiff's Section 43(a) cause of action, Plaintiff's Appeal Brief (page 69)cites Kuddle Toy v. Pussycat Toy Co., 183 U.S.P.Q. 642, 665 (E.D. N.Y. 1974) and Channel Master Corp. v. JFD Electronics Corp., 260 F.S. 568, 574 (E.D. N.Y. 1967). Kuddle Toy involved the copyright symbol "©"; Channel Master involved the word "Patent". Defendant's Brief does not respond to these cases. We now cite an even more recent decision in support of plaintiff's Section 43(a) cause of action, namely, John Wright v. Casper Corp., 419 F.S. 292 (D.C. Pa.1976), where the Court held (at page 327) that:

"Plaintiff's Exhibit No. 55 Casper's 1973 advertising brochure, takes pains to suggest that Casper holds patents on original penny banks and/or Casper reproductions. Neither is true. A photocopy of the offending brochure is appended to this Memorandum and Order as Attachment A. This misrepresentation may be subtle, compared to some of Casper's other false claims of quality, but in my view it is nevertheless a material misrepresentation of quality which tends to deceive an ordinary purchaser in the exercise of ordinary care. It therefore violates §43(a)."

There was no showing in that case of actual damage or injury resulting from defendant's false patent notice or representation. The Court in that case, unlike the trial Court in the present case, did not require a showing "that people have seen this and reported to him [plaintiff] and it affected his sales" (Plaintiff's Appeal Brief, page 65). In short, John Wright was decided on the basis of a likelihood of deception without a showing of actual damage or injury; the case at Bar was decided on the basis of a requirement for a showing of actual deception and actual damage or injury resulting therefrom.

Our opinion is that John Wright comports with this Court's decision in Gilliam v. American Broadcasting Companies, 538 F. 2d 14 (2 Cir. 1976) and that the decision in the case at Bar does not. Gilliam was cited in Plaintiff's Appeal Brief, page 69, but Defendant's Brief does not respond to it.

Gilliam, of course, speaks for itself, but it may be noted (a) that it relates to copyrighted material, and (b) that it sanctions a remedy under Section 43(a) of the Lanham Act without a showing of actual deception and actual damage or injury re-

sulting therefrom (538 F. 2d at pages 24-26). It is also interesting to note in Gilliam (page 25) that the defendant in that case had "impaired the integrity of appellants' work". Although in a somewhat different context, this same statement could very well be applied to the case at bar: defendant has indeed impaired the integrity of plaintiff's copyrighted work.

The cases cited in Defendant's Brief (page 28) do not support defendant's contentions. Potato Chip Institute v. General Mills, 333 F.S. 173 (D.C. Nebraska, 1971) completely reinforces plaintiff's reliance, in the case at Bar, on likelihood of deception and damage as the basis of its Section 43(a) cause of action. In the Potato Chip case, 333 F.S. at page 179, the Court expressly held that:

"To be entitled to injunctive relief the burden is upon the plaintiffs to show by a preponderance of the evidence:

* * *

"(3) the reasonable belief of the plaintiffs that they are or are likely to be damaged by the use of such false description or representation."

Marshall v. Proctor & Gamble Manufacturing Co., 170 F.S. 828 (D.C. Md. 1959) has no bearing on the present case, since in Marshall (page 833) there was no false representation by defendants, and (page 836) "plaintiff has not put his product on the market; he alleges only a hope or expectation of licensing others, who will in the future market a soap which will then come into competition with defendant's soap."

c. Plaintiff's Section 43(a) Cause of Action is Not Moot.

The final paragraph in Defendant's Brief reads as follows:

"Finally, as stated in the affidavit of George E. Goldberg sworn to June 10, 1976 and submitted in opposition to Greeff's motion for partial summary judgment on its Lanham Act claim, Malden has long since ceased using any copyright symbol in its strikeoffs of this fabric. Indeed, Malden has long since ceased using any strikeoffs of this fabric, since strikeoffs are naturally destroyed once production goods are available. Thus, as Greeff knows, this issue is moot."

Our response to this statement is (1) Mr. Goldberg's here-say affidavit fails to support the statement (2) defendant should be estopped, by its conduct at trial, from relying on its attorney's affidavit as evidence of a contested fact, (3) both the affidavit and the statement are contradicted by the testimony of defendant's general manager Glasser and defendant's national sales manager Levine and (4) plaintiff's claim for damages survives defendant's alleged cessation of use of its false copyright notice.

(1) Mr. Goldberg's Affidavit Fails to Support the Statement in Defendant's Brief.

The following allegation is the only allegation in Mr. Goldberg's affidavit of June 10, 1976 concerning defendant's alleged cessation of use of its false copyright notice (pages 2-3):

"Finally, with respect to plaintiff's request for an injunction preventing defendant from continuing to apply its copyright notice to strikeoffs of the subject design, it should hardly be necessary to say that defendant is no longer using a copyright symbol in connection with its strikeoffs of this fabric (or of any other fabric where defendant does not intent to make a claim to copyright)."

But it is necessary to say this and it is necessary for someone with personal knowledge of the facts to say it. An

allegation which is hedged with the argumentative preface "it should hardly be necessary to say" is not a direct, affirmative statement of a fact.

(2) Defendant Is Estopped from Relying on an Affidavit of its Attorney as Evidence of a Contested Fact.

This affidavit, dated June 10, 1976, was never placed in evidence; defendant's attorney admittedly had no personal knowledge of the facts (Defendant's Answers, dated June 29, 1976, to Plaintiff's Interrogatories, App. 21a); and defendant's attorney has adopted the binding position that affidavits by attorneys are improper (App. 439a; Defendant's Memorandum of Law In Support of Defendant's Motion to Remove Plaintiff's Attorneys).

(3) Mr. Goldberg's Affidavit is Contradicted by the Testimony of Defendant's General Manager and Defendant's National Sales Manager.

Defendant introduced no testimony whatsoever at the trial to show that it had ceased using its false copyright notice. But we do have the deposition testimony of its General Manager Glasser given on June 23, 1976 (pages 33-35):

Q [MR. SAMUEL J. STOLL] Mr. Glasser, have you sent any instructions to your salesmen to stop using the strike-off samples that bear the copyright symbol?

A [MR. MILTON J. GLASSER] I haven't given any instructions to anybody.

* * *

Q So that the new screen is really for new patterns; is that correct?

A Yes.

Q You are not really supplying strike-offs for existing

patterns; the new screen is for new patterns; is that your testimony?

A The new screen is for any new patterns.

Malden's National Sales Manager Levine in his deposition testimony (pages 58-59) fully concurred:

Q [MR. SAMUEL J. STOLL] Have you given any instructions to your salesmen with respect to using strike-off samples that have a copyright symbol imprinted on them?

* * *

A [MR. SANFORD . LEVINE] No.

Q Has anybody in your office given such instructions?

A No.

* * *

Q Have any of your salesmen been instructed not to use any strike-offs that have a copyright symbol?

A No.

It is clear from the foregoing testimony that defendant have never instructed its salesmen to stop using the existing samples bearing the false copyright notice, not only the samples of the infringing design in suit, but also the samples of defendant's entire line of 175 upholstery fabric designs. It is clear that the new screens (with the false copyright notice deleted) were intended for use only in connection with new designs, not the 175 existing designs in defendant's upholstery fabric line, including the infringing fabric in suit.

Clearly, the above-quoted testimony contradicts Mr. Goldberg's allegation that defendant "has long ceased using any copyright symbol on its strikeoffs of this fabric".

Defendant's Brief presumptuously states, after alleging that use of the false notice has stopped (page 28), "Thus, as Greeff knows, that issue is moot." We do not know this issue is moot. See: Blisscraft of Hollywood v. United Plastics Co., 294 F. 2d 694, 702 (2 Cir. 1961) and United Merchants & Manufacturers v. Sutton, 282 F.S. 588, 591 (S.D.N.Y. 1967).

Counsel for defendant alleges that defendant "has long ceased using any copyright symbol on its strikeoffs of this fabric" (Defendant's Brief, page 28) but what does counsel say about the effect of such use on customers prior to the alleged cessation? Defendant is continuing to sell its infringing fabric (App. 242a), yet there is no showing, no suggestion, that defendant has ever retracted its claim to copyright in the design - plaintiff's design - which is embodied in that fabric. It is a fair presumption, which defendant has not been, and should not be, heard to deny, that customers exposed to defendant's false copyright notice have been led to believe, and continue to believe, that defendant is the author and copyright owner of the infringing design.

In an analogous case, W.E. Bassett Company, v. Revlon, 435 F. 2d 656, 664 (2 Cir. 1970), this Court held that:

"An accounting should be granted if the defendant is unjustly enriched, if the plaintiff sustained damages from the infringement, or if an accounting is necessary to deter a wilful infringer from doing so again."

This issue is not moot. Defendant should be held accountable for its outrageous conduct; it should be required to disgorge its ill-gotten gains; and it should be enjoined and restrained from ever again engaging in such conduct. Its claim to copyright in its infringing copy of plaintiff's design should be rejected by the Court, and defendant should be required to notify its customer accordingly. Defendant should also be ordered to recall from its salesmen and sales representatives all existing strikeoff samples of the infringing fabric bearing the false copyright notice. See Fisher-Price Toys v. My-Toy Co., 385 F.S. 218, 223 (S.D.N.Y. 1974) on the extent of injunctive relief to which plaintiff should be entitled, with particular reference to retraction of the false claim of copyright to plaintiff's design and recall of all existing samples bearing the false copyright notice.

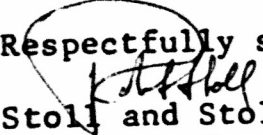
The issue is not moot since judgment for defendant means that plaintiff must reimburse defendant for its costs and attorney fees.* Plaintiff, not defendant, is the aggrieved and wronged party. It is defendant, not plaintiff, who is the infringer. It is defendant, not plaintiff, who falsely claimed copyright in the infringing fabric. Nevertheless, plaintiff is required to pay defendant its costs and attorneys fees!

* Defendant's original demand (by motion) was for \$32,000 in attorneys fees and expenses. Defendant's motion was denied except for costs and certain attorney fees totaling, according to defendant, \$6,921.49.

CONCLUSION

It is respectfully urged that the decision of the District Court be reversed, that the District Court be directed to enter judgment in favor of plaintiff-appellant and issue injunctions against defendant-appellee as to both causes of action in the amended complaint, and to award to plaintiff-appellant such damages as it may find, together with the costs of the action and the appeal and a reasonable attorneys fee in both courts as to both causes of action.

Respectfully submitted,


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ADDENDUM

A D D E N D U M

Analogous Statutes and Rules and Regulations Relating to Affixation of Notice

Patent Act, 35 U.S.C. 292(a):

"Whoever marks upon, or affixes, to, or uses in advertising in connection with any unpatented article, the word "patent" or any word or number importing that the same is patented, for the purpose of deceiving the public; * * * Shall be fined not more than \$500 for every such offense."

Lanham Trademark Act, 15 U.S.C. 1125:

"(a) Any person who shall affix, apply, or annex, or use in connection with any goods or services, or any container or containers for goods, a false designation of origin, or any false description or representation. * * * shall be liable to a civil action* * *."

Wool Products Labeling Act, 15 U.S.C. 68(b):

"(a) A wool product shall be misbranded—* * * (2) If a stamp, tag, label, or other means of identification, or substitute therefor under section 68c of this title, is not on or affixed to the wool product and does not show-***."

Fur Products Labeling Act, 15 U.S.C. 69:

"*** a fur product shall be considered to be misbranded-***
"(2) if there is not affixed to the fur product a label showing in words and figures plainly legible—* * *."

Hazardous Substances Act, 15 U.S.C. 1261:

"(n) The term "label" means a display of written, printed, or graphic matter upon the immediate container of any substance or***a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto:***."

Textile Fiber Products Identification Act
Rules and Regulations

RULE 15 - Label and Method of Affixing.

The label required to be on or affixed to the textile fiber product shall be such as is appropriate to the nature and type of product. Such label shall be conspicuously affixed to the product or, where permitted, its package or container in a secure manner and shall be of such durability as to remain on and attached thereto throughout the sale, resale, distribution and handling of the product, and, except where otherwise provided, shall remain on or be firmly affixed to the product or, where permitted, its package or container when sold and delivered to the ultimate consumer. [16 CFR § 303.15]

Wool Products Labeling Act
Rules and Regulations

RULE 5 - Types of Labeling and Methods of Affixing Marks to Product

The stamp, tag, label, or other means of identification shall be such as is appropriate to the nature of the product and shall be affixed to the product securely and with sufficient permanency to remain thereon in a conspicuous, clear, distinct and plainly legible condition throughout the sale, resale, distribution and handling incident thereto, and shall remain on or be firmly affixed to the respective product when sold and delivered to purchasers and purchaser-consumers thereof. Where these requirements are met, the stamp, tag, label or other means of identification may be affixed by having the required information stencilled, imprinted or branded upon the product itself, or placed thereon in the form of a strong, durable label securely sewed or stapled to the product or otherwise securely attached thereto, or by a strong, durable tag securely tied to the product. (See Rule 15 for provision as to marking containers or packaging of wool products.) [16 CFR §300.5]

RULE 6 - Labels to be Avoided.

Stamps, tags, labels, or other marks of identification, which are insecurely attached, or which in the course of offering the product for sale, selling, reselling, transporting, marketing, or handling incident thereto are likely to become detached, indistinct, obliterated, illegible, mutilated, inaccessible, or inconspicuous, shall not be used. [16 CFR §300.6]

Fur Products Labeling Act **Rules and Regulations**

RULE 27 - Label and Method of Affixing.

At all times during the marketing of a fur product the required label shall have a minimum dimension of one and three-fourths (1 3/4) inches by two and three-fourths (2 3/4) inches. Such label shall be of a material of sufficient durability and shall be conspicuously affixed to the product in a secure manner and with sufficient permanency to remain thereon throughout the sale, resale, distribution and handling incident thereto, and shall remain on or be firmly affixed to the respective product when sold and delivered to the purchaser and purchaser-consumer thereof. (16 CFR § 301.27)

RULE 28 - Labels to Be Avoided.

Labels which are insecurely or inconspicuously attached, or which in the course of offering the fur product for sale, selling, transporting, marketing, or handling incident thereto, are likely to become detached, indistinct, obliterated, illegible, mutilated, inaccessible or inconspicuous shall not be used. (16 CFR § 301.28)

Hazardous Substances Act **Rules and Regulations**

(12) "Label" means a display of written, printed, or graphic matter upon the immediate container of any substance or, in the cases of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto. A requirement made by or under authority of the act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears (i) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper and (ii) on all accompanying literature where there are directions for use, written or otherwise.

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